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BEFORE THE  
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-842X  
ALMONO LP – ABANDONMENT EXEMPTION  
IN ALLEGHENY COUNTY, PA



PETITION TO TOLL PERIOD FOR SUBMITTING  
OFFERS OF FINANCIAL ASSISTANCE

ENTERED  
Office of Proceedings

JAN 16 2003

Part of  
Public Record

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DATED: January 16, 2004

BEFORE THE  
SURFACE TRANSPORTATION BOARD

DOCKET NO. AB-842X  
ALMONO LP – ABANDONMENT EXEMPTION  
IN ALLEGHENY COUNTY, PA



PETITION TO TOLL PERIOD FOR SUBMITTING  
OFFERS OF FINANCIAL ASSISTANCE

Allegheny Valley Railroad ("AVR") hereby requests the Surface Transportation Board ("STB or Board") to toll the 10 day period for submitting offers of financial assistance herein in accordance with provisions of 49 C.F.R. 1152.27 (c) (i) (C). In support of its request AVR submits the following:

On January 9, 2004 AVR advised Almono of its intention to submit an offer of financial assistance ("OFA") to acquire the rail line sought to be abandoned herein and requested information as necessary to formulate an appropriate OFA in accordance with the provisions of 49 C.F.R. 1152.27 (a).<sup>1</sup>

On January 12, 2004 AVR filed a motion to intervene in these proceedings solely to urge the Board to deny the exemption from 49 U.S.C. 10904 (OFA procedures) sought by Almono in connection with its petition for exemption from provisions of 49 U.S.C. 10903 to abandon its entire line of railroad extending between the plant of shipper MetalTech on the north side of the Monongahela River and the interchange with CSX

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<sup>1</sup> Copy of request for information pursuant to 49 C.F.R. 1152.27 (a), attached as Exhibit No.1.

Transportation, Inc. (now AVR)<sup>2</sup> north of CSXT's Glenwood Yard in Hazelwood, Allegheny County, PA ("the subject line"). On that same day Almono essentially declined to provide the requested information and again urged the Board to grant its abandonment petition with a waiver of the OFA procedures.<sup>3</sup>

By order served January 13, 2004, the Board granted an exemption from the prior approval requirements of 49 U.S.C. 10903 and 49 U.S.C. 10905 for abandonment of the subject line by Almono. In that same decision the Board granted AVR's motion to intervene and denied Almono's request for an exemption from the OFA requirements of 49 U.S.C. 10904. The Order further provided that an OFA under 49 C.F.R. 1152.27 (c) (1) to allow rail service to continue must be received by the railroad and the Board by January 23, 2004, subject to time extensions authorized under 49 C.F.R. 1152.27 (c) (1) (C).

AVR has not received information essential to its formulation of an OFA as requested pursuant to 49 C.F.R. 1152.27 (a). In order to allow AVR adequate time for evaluation of the requested information for purposes of an appropriate OFA, AVR

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<sup>2</sup> As previously noted AVR acquired the connecting line pursuant to lease from CSX in Allegheny Valley Railroad Company – Lease Operation, and Trackage Rights Exemption – Lines of CSX Transportation, Inc. STB Finance Docket No. 34431, served November 26, 2003.

<sup>3</sup> Copy of January 12, 2004 letter from counsel for Almono is attached as Exhibit No. 2.

respectfully urges the Board to require Almono to promptly provide the requested information and to extend the period for AVR to file an OFA until 30 days after Almono provides requested documents and information as the Board has done in similar circumstances.<sup>4</sup>

Respectfully submitted,



Keith G. O'Brien  
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Counsel for Allegheny Valley Railroad Co.

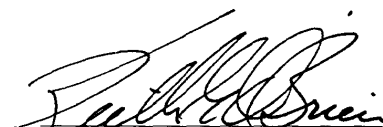
DATED: January 16, 2004

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<sup>4</sup> See, e.g., Railroad Ventures, Inc. – Abandonment Exemption – Between Youngstown, OH and Darlington, PA, in Mahoning and Columbiana Counties, OH and Beaver County, PA. STB Docket No. AB-556 (Sub-No. 2X). Order served September 10, 1999.

CERTIFICATE OF SERVICE

I hereby certify that I have on this the 16<sup>th</sup> day of January served a copy of  
Petition To Toll Period For Submitting Offers Of Financial Assistance, on all parties of  
record by U.S. Mail first class and by hand delivery.



Keith G. O'Brien

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January 9, 2004

Robert D. Rosenberg, Esq.  
Slover & Loftus  
1224 Seventeenth Street, NW  
Washington, D.C. 20036

Re: STB Docket No. AB-842X  
Almono LP – Abandonment Exemption –  
In Allegheny County, PA.

Dear Mr. Rosenberg:

Allegheny Valley Railroad Company, 25 South Broadway, Scottdale, PA 25683 ("AVR") intends to submit an offer of financial assistance to assure continuation of rail service over the entire line described in the petition for exemption in the above docket in accordance with the requirements set forth in 49 C.F.R. 1152.27(a). For purpose of an appropriate offer to acquire the line AVR hereby requests Petitioner Almono LP ("Almono") to promptly provide the following information:

1. Almono's estimate of the minimum purchase price required to keep the entire line in operation.
2. The most recent reports on the physical condition of the involved line.
3. Almono's estimate of the net liquidation value of the line with supporting data reflecting available real estate appraisals.



assessments of the quality and quantity of track material on the line and removal cost estimates (including the cost of transporting removed materials to point of sale or point of storage for relay use).

4. Documentation to show the extent to which Almono has marketable fee title on the rail line right-of-way as contrasted to easements or other interests that would revert to others of the line were not being used for railroad purposes. Such documentation of title is deemed necessary to determine whether and to what extent rail line real estate should be considered for net liquidation value purposes. 49 C.F.R. § 1152.27 (a) (3).
5. Valuation maps for the rail line including any deed indices that appear on the accompanying maps. Such maps are essential to verification as to the quality of land included on the rail line. As such the information requested is deemed included within the meaning of 49 C.F.R. § 1157.27 (a) (3).
6. Any other information deemed relevant to appropriate valuation of the line for purposes of acquisition pursuant to an offer of financial assistance.

On December 23, 2003, AVR commenced operations over the connecting line over which all of the rail traffic handled on the involved line currently moves.<sup>1</sup> The traffic moving to and from the shipper comprises a substantial percentages of the traffic moving over the AVR's leased line and this is of considerable importance to continued

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<sup>1</sup> See Allegheny Valley Railroad Company, Lease, Operation and Trackage Rights Exemption -- Lines of CSX Transportation, Inc. STB Finance Docket No. 34431 served November 26, 2003.

viability of AVR's operations and to shippers served directly on that line. Because of the vital importance of assuring that railroad traffic can continue to move over the subject line AVR has determined to acquire the line pursuant to an appropriate offer of financial assistance.

AVR is aware that Almono has requested the Board to waive offer of financial assistance procedures to facilitate plans for redevelopment involving the right-of-way and that it has indicated that it will allow private rail service to the involved shippers. However, such private rail service would be subject to cessation on short notice at any time depending upon progression of redevelopment plans.

AVR is committed to work out mutually acceptable arrangements with the involved shipper that will assure that it will continue to receive responsive rail service on terms at least as attractive as those described for purposes of temporary private carriage. Moreover, AVR will be willing to cooperate fully with Almono in progressing any redevelopment plans that would not interfere with continued rail operations over the involved line. In the circumstances AVR feels strongly that a waiver of offer of financial assistance procedures would not be in the best interests of responsive rail service.

AVR looks forward to receiving the requested information.

Sincerely,

A handwritten signature in black ink, appearing to read "Keith G. O'Brien", written over the word "Sincerely,".

Keith G. O'Brien  
Attorney for Allegheny Valley Railroad  
Company

cc: Mr. Vernon A. Williams, Secretary  
Surface Transportation Board



**SLOVER & LOFTUS**

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January 12, 2004

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BY HAND

The Honorable Vernon A. Williams  
Secretary  
Surface Transportation Board  
1925 K Street, N.W., Room 711  
Washington, D.C. 20423-0001

Re: Docket No. AB-842X, Almono LP -- Abandonment  
Exemption -- In Allegheny County, Pennsylvania

Dear Mr. Secretary:

On the afternoon of January 9, 2004, the undersigned counsel for Almono LP ("Almono"), the Petitioner in the above proceeding seeking an exemption for abandonment as well as waiver from the Offer of Financial Assistance ("OFA") procedures, received a letter from counsel for Allegheny Valley Railroad Company ("AVR"). AVR's letter, a copy of which was addressed to the Board's Secretary and referenced the captioned proceeding, stated AVR's intent to submit an OFA and requested Almono to provide information for that purpose. AVR's letter also stated AVR's opposition to Almono's OFA waiver request.

Almono understands that the Commission's procedures call for a decision on Almono's petition to be issued by January 13, 2004. AVR's letter thus represents a last-minute effort to derail Almono's proposed abandonment. Indeed, comments on Almono's proposed abandonment, as well as any opposition to the OFA waiver request, were due November 4, 2003, over two months ago, under the Commission's notice in this proceeding issued October 15, 2003.

AVR's opposition to Almono's OFA waiver request is thus untimely, and should be denied for that reason alone. Moreover, there are compelling substantive reasons for rejecting AVR's opposition.



The Honorable Vernon A. Williams

January 12, 2004

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First, Almono's abandonment request is supported by the shippers serviced by the line proposed for abandonment. The OFA procedures exist to protect shippers, not other carriers, especially those that wait until the last minute to assert their purported interests. Accordingly, AVR has no standing to oppose the OFA waiver request.

Second, AVR's claim that it will suffer economic hardship from the abandonment because it will lose a "substantial percentage of the traffic moving" on a connecting line it recently leased from CSXT is a problem entirely of AVR's own making. AVR can make no claim that it only recently became aware of Almono's proposed abandonment. Almono's acquisition notice made clear that Almono intended to abandon the line with the affected shipper's support. F.D. No. 32450, Almono LP-- Acquisition and Operation Exemption--Line of Monongahela Connecting Railroad Company (STB served Oct. 2, 2002) at 1 n.2, and AVR (or related entities) have been providing private service to the affected shipper throughout the period of Almono's ownership of the line. As AVR was undoubtedly aware of Almono's plans from their inception, it was incumbent upon AVR to take the proposed abandonment into account in its voluntary decision to lease the CSXT line. Any reliance by AVR on the continuing common carrier operation of the Almono line was inherently unreasonable and certainly not a legitimate candidate for protection under the OFA procedures.

Third, it is important to realize that Almono acquired the line of the former Monongahela Connecting Railroad Company and the surrounding property from the LTV Steel Corporation ("LTV"), which was (and still is) liquidating its assets in bankruptcy. Id., n.1. AVR, as well as any other person, had the same opportunity to acquire the line and the assets in question. Almono was the only party that sought to do so, and Almono did so only after first gaining the support of the shipper addressed by AVR. Id., n.2. Having failed to come forward at the earlier time, AVR's would-be interests are not entitled to greater protection at the last minute.

Fourth, it is also important to understand and appreciate that, as explained in the Petition for Exemption and in the Board's original acquisition notice at n.2, Almono's purpose in acquiring the line was and remains to redevelop the surrounding property, and Almono has expended substantial resources -- in excess of \$9 million alone just to acquire the property -- to the endeavor. Furthermore, Almono and its partners are nonprofit institutions that are seeking not merely monetary gains, but to make a substantial contribution to the public welfare and economic development of the Pittsburgh area. The continued common carrier existence of the line is inconsistent with Almono's redevelopment plans. Accordingly, an appropriate going concern value analysis would

The Honorable Vernon A. Williams  
January 12, 2004  
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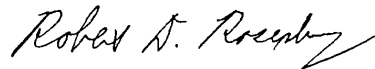
not be confined to the mere value of the line, but would need to take into account the overall economic and public value of the surrounding property when redeveloped. AVR has given no indication that is prepared to provide that level of compensation.

Almono did not submit its OFA waiver request lightly. Instead, it reflected the reality that the redevelopment of the property, which Almono is undertaking at substantial cost and risk, should not be limited by the continued common carrier existence of the rail line. The shipper's support for Almono's eventual removal of the line was an essential condition for Almono's acquisition of the line and surrounding property in the first place. AVR's last-minute intrusion should not be allowed to upset Almono's substantial undertaking.

Almono adds that even following abandonment, AVR or related non-common carrier entities will have a substantial opportunity to continue serving the affected shipper (assuming the affected shipper chooses to continue doing business with AVR). Almono has no immediate plans to remove the line, and certainly not on short notice. Instead, Almono looks forward to continuing to work with the affected shipper to balance its needs and Almono's redevelopment plans. Private service to the shipper appears likely to continue for several years at least. However, redevelopment requires that Almono be able to remove the line at the appropriate time without regulatory uncertainty, which is why Almono sought a waiver from the OFA procedures for its abandonment and why the waiver should be granted.

Accordingly, Almono respectfully requests that the Board grant the abandonment petition with a waiver of the OFA procedures.

Respectfully submitted,



Robert D. Rosenberg  
An Attorney for Almono LP

RDR:kaw

cc: Keith G. O'Brien, Esq., Counsel for Allegheny Valley Railroad Company  
(by hand)